Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1976.

No. 76-699

THE AMERICAN PARTY OF IDAHO,
JOHN McADAMS,
individually and as chairman of
THE AMERICAN PARTY of Idaho, Appellants,

— vs. —

CECIL ANDRUS, Chairman of the
State Board of Examiners, and the
Idaho State Board of Examiners;
DENNISON C. AMBROSS, Director of the
Corporation Department of Revenue and
Taxation; JOE R. WILLIAMS, Idaho
State Auditor; PETE CENARRUSA,
Secretary of the State of Idaho;
and MARJORIE MOON, Treasurer of
the State of Idaho, Appellees.

IDAHO STATE DEMOCRATIC PARTY, Intervenor

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the United States District Court for the District of Idaho entered on August 19, 1976, granting summary judgment against Appellants in their attack upon the constitutionality of the state campaign financing act for failure to state a claim upon which relief could be granted. Appellants submit this Statement to demonstrate that the Supreme Court of the United States has jurisdiction of the Appeal and that substantial questions are presented.

OPINION BELOW

There is no reported opinion of the District Court for the District of Idaho. A copy of the Order and Judgment of the District Court granting Defendants' motion for summary judgment is attached hereto as Appendix A.

JURISDICTION

This suit was brought under 28 U.S.C. section 1343 (3) and (4) to secure the redress for the deprivation under color of State law of a right, privilege or immunity guaranteed by the United States Constitution or by act of Congress and to obtain equitable protection of the civil rights of the Appellants. The Appellants claim a deprivation of rights guaranteed by the Fourteenth Amendment to the United States Constitution and by 42 U.S.C. section 1983. A three-judge district court was requested and properly convened in this action under 28 U.S.C. sections 2281 and 2284. The judgment of the District Court for the District of Idaho was entered on August 19, 1976, and timely notice of appeal was filed on November 16, 1976 in that court. The jurisdiction of

the Supreme Court to review this decision is conferred by Title 28, United States Code, section 1253. The following cases sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *MTM, Inc. v. Baxley, 95 S. Ct. 1278 (1975); Roe v. Wade, 410 U.S. 113 (1973); and Lynch v. Household Finance Co., 405 U.S. 538 (1972).*

STATUTES INVOLVED

Sections 34-2501 et seq. of the Idaho Code, and in particular, section 34-2503(b) are set out verbatim in Appendix B. Also set out is Idaho Code section 34-501.

QUESTIONS PRESENTED

Is a system of state campaign financing which distributes funds to political parties based upon the performance of a party's candidate in the gubenatorial election next preceding the distribution of the funds an arbitrary denial of the fundamental right to an equal opportunity to participate in the electoral process as guaranteed by the Fourteenth Amendment to the United States Constitution?

Is a system of state campaign financing which conditions eligibility for funds upon a political party's participation and performance in the gubenatorial election next preceding the distribution of the funds a denial of fundamental rights to equality and an invidious classification contrary to the Fourteenth Amendment of the United States Constitution?

STATEMENT OF THE CASE

On March 26, 1975, the Governor of Idaho signed into law House Bill No. 260 which became effective July 1, 1975. The bill, subsequently codified as Idaho Code sections 34-2501 et seq. (see Appendix B), provided for a system by which the taxpayers of Idaho would assume a portion of the campaign and election expenses of political parties in this State by direct subsidies to those parties. The system created provided funds to political parties through a $1 tax liability "check-off" which could be exercised by an Idaho income taxpayer, earmarking that dollar of his tax monies for the campaign fund. The dollar could be directed to either of four funds: a Democratic party fund; a Republican party fund; a fund for other political parties as indicated by the taxpayer by writing in the name of that party; and an "undesignated" fund. Under the procedure provided by the act, ninety per cent (90%) of the "undesignated" fund is distributed to political parties in Idaho which fielded a candidate for the office of governor in the general election preceding the distribution of the fund (see Idaho Code section 34-2503 (b) in Appendix B). The distribution for the fund in the statute dictates that money be disbursed to parties in the same proportion to the votes that each recipient party's candidate received for the office of governor in relation to the total votes case in the election next preceding the distribution of the monies, provided that no one party receive more than fifty per cent (50%) of the fund.

The Appellants are the American Party of Idaho and its duly elected chairman, John McAdams. The Party is an affiliation of electors representing a political group and is properly created and qualified to participate in the electoral process in Idaho. Mr. McAdams is a member in good standing of the Party and is an Idaho resident.

On July 27, 1976, the Appellants filed this action in the United States District Court for the District of Idaho in Boise asking for an injunction against any distribution of the so-called "undesignated" funds and for a declaratory judgment striking down the distribution formula and eligibility requirements of the state campaign financing act as in violation of the United States Constitution. The named Defendants in the suit were those state officers and administrators charged under the law to execute and supervise the distribution of funds under the state campaign financing program.

On August 1, 1976, the Attorney-General of Idaho, counsel for the Defendants, moved the court for a summary judgment and dismissal of the action. The Democratic Party of Idaho was also allowed to intervene. A three-judge statutory district court was convened and the issues briefed and argued on the 19th of August. At the conclusion of that hearing, the court granted the Defendants' Motion for Summary Judgment and issued its Order in that regard (see Appendix A). It is from this judgment that the Appellants appeal.

THE QUESTIONS ARE SUBSTANTIAL

It can hardly be doubted that a free and open electoral process is the very foundation of a meaningful democratic society. Competitive and substantially unregulated elections serve to protect the ideas of those who, though a minority in number, seek to compete in the marketplace of political and social philosophies. Because of this, it is obvious that any governmental intrusion into this process must be examined with the utmost care to guard the integrity of the system. See *Kramer v. Union Free School District, 395 U.S. 621 (1969); Harper v. Virginia Board of*

Elections, 383 U.S. 663 (1966). Although the State enjoys some right to intervene with reasonable regulations of the nature and operation of elections, *Jenness v. Fortson, 403 U.S. 431 (1971); Williams v. Rhodes, 393 U.S. 23 (1968),* any intrusion must withstand the tests of the United States Constitution to be upheld. The Fourteenth Amendment restriction against invidious classifications clearly applies to protections of voting rights and political organizations. *Carrington v. Rash, 380 U.S. 89 (1965).*

Therefore, any examination of the Idaho system of campaign and election financing must be conducted with an alert eye toward possible constitutional infirmities. The political organizations most likely to be adversely affected by over-regulation of the electoral process are those parties small in number and subject to significant institutional disadvantages apart from any regulations. Consequently, any attempt by the government to "aid" in financing elections, must be especially tailored not to aggravate the natural imbalances of our majoritarian system.

I.

SECTION 34-2503(b) MUST BE TESTED BY THE "STRICT SCRUTINY" EQUAL PROTECTION STANDARD.

The classifications made by the State of Idaho in enacting this particular scheme of campaign financing must be subjected to the strict judicial scrutiny which comes into play when the government seeks to regulate fundamental rights. Although Appellants have advanced their arguments in Equal Protection terms, there are conspicuous overtones of the First Amendment in these challenges. The right of free political association is at the heart of the Appellants' Fourteenth Amendment charges and hence the stricter standard of review is appropriate. *Police Dept. of Chicago*

v. Mosley, 408 U.S. 92 (1972); Shelton v. Tucker, 364 U.S. 479, 488 (1960).

In the area of campaign financing the necessity of the higher standard of equality in measuring allowable state intervention is especially apparent. A lower Federal court aptly recognized this principle while speaking of an area of much similarity to government campaign financing when it said that "the courts have traditionally scrutinized carefully state schemes for regulating access to the ballot, and have not hesitated to strike down a scheme when it placed unreasonable obstacles in the way of candidates or parties." *Buckley v. Valeo, 519 F.2d 821, 880 (1975).* Although strictly speaking the Idaho financing scheme is not restricting "ballot access" as such, it does vitally affect the equally meaningful political interest of campaign effectiveness. It is axiomatic that in today's society in America that adequate campaign financing is essential for any degree of political effectiveness. The power to control campaign financing is in a very real sense the power to control political success.

This Court has recognized the grave personal First Amendment interests involved in government campaign funding, requiring more than mere rationality to pass constitutional muster:

> In several situations concerning the electoral process, the principle has been developed that restrictions on access to the electoral process must survive exacting scrutiny. The restriction can be sustained only if it furthers a 'vital' governmental interest, *American Party of Texas v. White, 415 U.S. 767, 780-81 . . . (1974),* that is 'achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidates' equally important interest in the continued availability of political opportunity.' *Lubin v. Panish, 415 U.S. 709, 716, . . . (1974). See American Party of Texas v. White, supra, 415 U.S. at 780 . . .; Storer v. Brown, 415 U.S. 724, 729-30 . . . (1974). Buckley v. Valeo, 96 S.Ct. 612, 670 (1976) (parallel citations omitted).*

The reason for applying the strict scrutiny standard here is based not only on likely deprivation of the fundamental rights of the candidates and political parties arbitrarily deprived from funding, but also as a means of protecting closely related First Amendment rights of the **voters.** The reapportionment cases, *Reynolds v. Sims, 377 U.S. 368 (1964); Wesberry v. Sanders, 376 U.S. 1 (1964); and Gray v. Sanders, 372 U.S. 368 (1963,* unmistakably determined that the right to vote includes not merely the ability to cast a ballot, but also a citizen's right to an equally effective voice in the electoral system:

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of a representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise. *Reynolds v. Sims, supra, at 555.*

As the Court has noted, "the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that effect candidates always have at least some theoretical, correlative effect on voters." *Bullock v. Carter, 405 U.S. 134, 143 (1971).* This judicial attitude has been echoed in recent years in a broad range of cases dealing with the close inter-relationship of equal and effective access by candidates and political parties to the electoral process with the voting rights of their supporters:

> The interests involved are not merely those of parties or individual candidates; the voters can assert their preferences only through candidates or parties or both and it is this broad interest that must be weighed in the balance. *Lubin v. Panish, 415 U.S. 709, 716 (1974).*

It is therefore clear that burdens placed by the State upon candidates and political parties by discriminatory funding of campaigns implicate the constitutional rights of both the disfavored candidates and their supporters. The quotations

above indicate the Court's emphasis of the intricacy of the rights involved in issues such as are presented here, and the extreme delicacy with which the State must proceed in this area.

The Appellants would have this Corut merely recognize the obvious realities of the political process in our society today. Although the concept of state financed campaigns has attractive advantages, any scheme to implement such a program is prone to upsetting the vital state of equilibrium of opportunity for political participation. When examining such funding systems, it must be paramount that basic First Amendment rights of political expression are involved. These are not limited to those of the candidates or political parties in any manner. Consequently, when a state excludes some citizens, be they candidates or their supporters, from having the same opportunity to participate effectively in the electoral process that it grants to others, the standard for reviewing the classifications involved must be "whether the exclusions are **necessary** to promote a **compelling state interest**." *Dunn v. Blumstein, 405 U.S. 330, 337 (1972).* Under such a standard, "a heavy burden of justification is on the State, and the statute will be closely scrutinized in light of its asserted purposes." *Id. at 343.* As will be seen, the Idaho statutes fail to meet this high standard of fairness.

II.
SECTION 34-2503(b) UNCONSTITUTIONALLY FOSTERS AND PROMOTES INCUMBENCY AND INVIDIOUSLY CLASSIFIES POLITICAL PARTIES.

At least one constitutionally repugnant feature of the Idaho campaign financing system, and of Idaho Code section 34-2503(b) in particular, is the formula it utilizes in the distribution of the tax "check-off" dollars for which the taxpayer has not indicated a specific political party recipient. In Idaho, as in many western rural states, voters are not tied to party alliances nearly so strongly as in other

parts of the nation. As a consequence of this extreme voter independence of thought, the "No Specific Party" designation on the tax return is a popular and attractive method of contributing funds to the political campaign process without attaching voter support to any individual faction or philosophy. Hence, to many, the "undesignated" funds under the Idaho system represent the vehicle through which **all** legitimate political groups in the State might have a competitive and realistic opportunity to capture the voting support of the populace. However, the system of funding as presently constituted falls far short of realization of this opportunity, or of the protection of the constitutional rights of minor parties and the taxpayers who check the "undesignated" box on their return. Instead, the established and incumbent parties are given an unconstitutional "lion's share" of the undesignated funds.

Thought it hardly needs repeating, Mr. Chief Justice Warren once described the theme which the Appellants seek to have enforced in this action:

> All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, which innumberable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. . . . The absence of such voices would be a symptom of grave illness in our society. *Sweezy v. New Hampshire, 354 U.S. 234, 250-51(1957).*

Placing the major parties in such a position of perpetual dominance would clearly be undesirable, but the Idaho system does exactly that. By dividing 90% of the undesignated funds in proportion to the votes received by a party's candidate in the last election for governor, the State has ensured the incumbent party funds which may in a very real sense be far out of line with any demonstrable measure of support it might enjoy. In the words of Mr. Justice

Rehnquist in a recent decision by this Court, the Idaho system has "enshrined the Republican and Democratic party in a permanently preferred position, and has established requirements for funding to which the two major parties are not subject." *Buckley v. Valeo, supra at 761.*

Instead of achieving the admittedly valid governmental purposes of promoting an "influence-free" campaign to the voting public, the Idaho system places new, but strongly supported political parties squarely in the middle of an irresolvable dilemma. On the one hand, although the State is attempting to "aid" legitimate political interests in their efforts to expose their ideas to the public, the new party is offered only what is comparatively a meager amount of funding, determined by an indicator having no rational relation to current levels of popular endorsement. On the other hand, the under-financed new party is forced to compete with incumbent parties receiving a bulk of state campaign funds irrespective of any current indication of popular support. If the new party is at all inclined to continue its efforts in the political arena, it will be forced to resort to private funding interests. The irony of the situation becomes obvious when it is considered that about the only manner in which a new or minor party can be successful is when it caters to the money influences which the campaign financing act is seeking to play down. It is not inconceivable, then, that the exact result sought to be avoided by public financed campaigns (that being elected officials owing great political favors to those monied interests which provided their campaign funds) will be the necessary rule if the new or minor party is to be successful under the present system. This irony should point to the patent unreasonableness of the Idaho Code section 34-2503(b) distribution formula.

Up to this point, the examination of the campaign finance provisions of the Idaho laws has focused on the near insurmountable obstacles created for the political party whose candidate received only a small proportion of votes in the gubenatorial election preceding the distribution of undesignated funds. Although this situation is clearly a violation of basic Equal Protection principles, another realistic situation presents the invidious classification and discrimmination worked by the law in even sharper clarity. The implicit eligibility requirements of Idaho Code section 34-2503(b) dictate that in order to receive **any** share of the bulk of undesignated funds, a political party must have had a candidate for governor in the last general election. The classification inherent in such a requirement finances only those parties that had a candidate for governor in the election preceding fund distribution, while disqualifying parties not having a candidate from eligibility for receipt of state funds. Such a classification, as will be shown, neither embraces the realities or ideals of our political system, nor does it effectuate the purposes for which the public financing system was created in relation to those parties excluded.

First of all, it is entirely reasonable to assume that a potent political party could be organized and in operation within the time between the last gubenatorial election and the next gubenatorial election. This fact of political life has been accepted by the Court where it stated that, "since the principal policies of major parties change to some extent from year to year, and since the identity of the likely major party nominees may not be known until shortly before the election, the disaffected 'group' (i.e. a new political party) will rarely if ever be a cohesive or identifiable group until a few months before the election." *Williams v. Rhodes, 393 U.S. 23, 33 (1968).*

Taking the possibility of new parties being formed in less time than that between a gubenatorial election, and another general election (in some cases, of course, four years) it can be seen how unreasonable the Idaho scheme for determining eligibility for funds can be. Although Appellants recognize that Idaho has an interest in requiring "some preliminary showing of a significant modicum of support" *Jenness v. Fortson, 403 U.S. 431, 442 (1971),* before distribution of funds to aspirant political parties, the countervailing consideration must be kept in mind that the manner of making such a showing cannot be unreasonable in view of the interests sought to be protected. *Williams v. Rhodes, supra.* In the above case, the public fisc may be protected, but only at the expense of the rights to effective political participation and expression of a group which may well command widespread support. Anytime this results, a careful re-examination of the fundamental fairness of such a classification is needed.

Another factor pointing to the basic lack of rationality of the Idaho eligibility requirement is found in another part of the same chapter in which the campaign financing laws are found in the Idaho Code. In Idaho Code section 34-501, the qualifications and definitions for "political parties" are found which entitle groups to the benefits of official state recognition — sanctioned participation in elections, recognized conventions, nomination of candidates, etc. It is interesting to note that two of three statutory methods for gaining recognition as a valid and bona fide political party in Idaho will **not** entitle the group to any share of the undesignated campaign funds. Neither running three candidates for state or national office nor the petition procedure found in the subsections of Idaho Code section 34-501 would qualify a group for state financing. The State can hardly argue that a new political party might "waste"

public campaign funds on the one hand, when on the other hand it has sanctioned the association of electors to participate in all other important phases of the political process. By adopting these various procedures for attaining state recognition of political party status, the State has implicitly admitted that there are more workable and fair alternatives to the standard found in the campaign finance act as means of indicating the degree of seriousness and support for political parties. It can be argued under this analysis that the withholding of financing from these legitimate and qualified parties is invidious discrimination in direct proportion to the granting of funds to opposing parties. *Harper v. Virginia Board of Elections, supra.*

The state financing system is all the more irrational when it is considered that none of the widely propounded reasons for the utilization of publicly financed campaigns are effectuate in relation to new bona fide political groups. The Court in *Buckly v. Valeo, supra,* identified two prime governmental interest furthered by the public funding scheme examined there, as well as by such schemes as the Idaho system: "eliminating the improper influence of large private contributions" and "relieving major party . . . candidates from the rigors of soliciting private contributions." *96 S.Ct. at 671.* In addition, the Court also found a public interest "in not funding hopeless candidacies with large sums of public money, . . . (which) necessarily justifies the withholding of public assistance from candidates without significant public support." *Id.* On this last point, it was noted that the support requirement would also further the "public interest against providing artificial incentives to 'splintered parties and unrestrained factionalism.'" *Id.* (citations omitted). Although the State might claim other interests in public financing of campaigns, the above three goals represent the paramount motivating

factors in adopting the funding scheme, and should be the focus of examination by equal protection standards. See *O'Neill v. Dent, 364 F.Supp. 565, 578 (1973).*

Unfortunately, the State finance eligibility requirements bear no rational relation to the above legitimate state interests. Parties with significant support (qualifying, for example, under section 34-501) but who did not have a candidate for governor in the last general election, will not receive support under section 34-2503(b). These parties will have to seek private contributions to overcome the advantage given their opponents by the State. They may never succeed in achieving funding parity. Candidates of the party will necessarily be compelled to spend more time fund-raising than their opponents. Placing candidates at that disadvantage, requiring them to seek "catch-up" funds from private sources, increases the opportunity for improper influence and the burden of fund-raising. This is exactly contrary to the purpose of the law.

As has been discussed, the third interest — providing funds only to serious parties and candidates — is similarly unrelated to the discrimination against this type of party. The gubenatorial performance standard clearly has no relation to parties strong years later. Undoubtedly, other more imaginative schemes are available which would treat all parties having substantial voter support more even-handedly. When dealing with fundamental rights of political participation, the Fourteenth Amendment demands the adoption of the most tailored of methods in regulating those rights (see part I).

Finally, the use of the preceding governor's election results as a standard for eligibility for public funds does nothing to prevent state financing of obsolete and all but "dead" parties. In a period of four years, political movements can easily run their life. It is contrary to the

interest expressed in *Buckley* to encourage false life and activity in such movements simply because of substantial measures of support in years passed. *See Storer v. Brown, 415 U.S. 724, 736 (1974).* This type of program hardly discourages the "splintered parties and unrestrained factionalism" discussed in the *Buckley* opinion. Yet, this possibility is very real under the Idaho system.

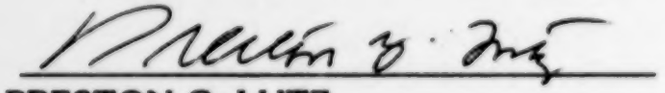
Basic to the problems with section 34-2503(b) is that it "ignores the potential fluidity of American political life", *Jenness v. Fortson, supra at 439,* and serves to artificially perpetuate the political alliances formed at a gubenatorial election held in the past. Legislative enactments which tend to dilute the political strengths of certain elements of the population are constitutionally invalid. *East Carroll Parish School Board v. Marshall, 44 U.S.L.W. 4320 (March 8, 1976); White v. Regester, 412 U.S. 755 (1973); Moore v. Ogilvie, 394 U.S. 814 (1969); Reynolds v. Sims, supra.* The Appellants seek the opportunity to persuade this Court to recognize that this legislative attempt to "aid" in improving the effectiveness of the electoral process misses its goal. In the words of this Court, it has been said of such efforts that "what is demanded may not be so excessive or impractical so as to be in reality a mere device to always, or almost always, exclude parties with significant support from the ballot. The Constitution requires that access to the electorate be real, not merely 'theoretical'". *American Party of Texas v. White, 415 U.S. 767, 783 (1974) (citations omitted).* The measure of the Appellant American Party's support in 1978 should not be determined in 1974. Whether the Party can be a viable political alternative in 1982 should not be conditioned upon its decision to advance a candidate for governor in 1978.

In challenging this statute, the Appellants are exercising a constitutional protection well known to this Court in that "Equal Protection confers the substantial right to participate on an equal basis with other qualified voters whenever the State has adopted an electoral process for determining who will represent any segment of the State's population." *San Antonio School District v. Rodriguez, 411 U.S. 1, 59 n.2 (1973) (Stewart, J., concurring).* This part of the state-adopted electoral process, the funding of political campaigns, falls too short of the equality the Constitution demands.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court grant jurisdiction of this appeal, for plenary consideration with briefs on the merits and oral argument. We believe that the questions presented are substantial and of public importance.

Respectfully submitted,



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Counsel for Appellants

APPENDIX A

PETER E. HEISER, JR.
Chief Deputy Attorney General
State of Idaho

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

THE AMERICAN PARTY OF IDAHO, JOHN McADAMS, individually and as chairman of THE AMERICAN PARTY of Idaho,
Plaintiffs,

— vs. —

CECIL D. ANDRUS, Chairman of the State Board of Examiners, and the Idaho State Board of Examiners; DENNISON C. AMBROSS, Director of the Corporation Department of the Idaho Department of Revenue and Taxation; JOE R. WILLIAMS, Idaho State Auditor; PETE CENARRUSA, Secretary of the State of Idaho; and MARJORIE MOON, Treasurer of the State of Idaho,
Defendants,

IDAHO STATE DEMOCRATIC PARTY,
Intervenor.

Civil No. 1 76 148

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

A three judge panel, consisting of Circuit Judge J. Blaine Anderson and District Judges Ray McNichols and Fred M. Taylor, having been convened according to law, and this matter having come on to be heard in open Court at 10:00 a.m. on the 19th day of August, 1976, to consider Defendants' Motion to Dismiss and Motion for Summary Judgment, with Plaintiffs being represented by Preston G. Lutz, Esq., and Frank Benson, Esq., the Defendants being represented by Chief Deputy Attorney General of Idaho, Peter B. Hieser, Jr., Esq., and the Intervenor being represented by Paul J. Buser, Esq., and the parties having submitted various documentary evidence and legal briefs to the Court together with their arguments on the merits herein, and the Court having considered the same, and the Court being fully advised in the premises, rules and enters its order as follows:

1. This Court has jurisdiction over the parties and subject matter of Plaintiffs' Complaint; and

2. Plaintiffs' Complaint fails to state a claim upon which relief can be granted, with Defendants, therefore, being entitled to summary judgment in their favor as a matter of law, it being the opinion of this Court that the cases of *Buckley v. Valeo, U.S. 46 L.Ed. 2d 659, No. 75-436 (Decided Jan. 30, 1976), and American Party of Texas v. White, 415 U.S. 767 (1974),* are dispositive of the legal issues advanced by Plaintiffs herein.

NOW, THEREFORE, IT IS HEREBY ORDERED, AND THIS DOES ORDER, that summary judgment in the above-entitled matter is entered in favor of Defendants and against Plaintiffs.

DATED this 19th day of August, 1976.

/s/ _____
J. Blaine Anderson, Circuit Judge

/s/ _____
Fred M. Taylor, District Judge

/s/ _____
Ray McNichols, District Judge

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on the 19th day of August, 1976, I served true and correct copies of the above and foregoing ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT upon the attorneys of record herein:

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   Attorney at Law
   P.O. Box 2898
   Boise, Idaho 83701
   ATTORNEY FOR INTERVENOR

by depositing a copy of the same in the United States Mail, first class postage prepaid, in a sealed envelope addressed to said attorneys at the foregoing addresses, which are the last addresses of said attorneys known to me.

/s/ _____
Peter E. Heiser, Jr.

APPENDIX B

IDAHO CODE SECTION 34-501

"Political party" defined —
Procedures for creation of a political party.

(1) A "political party" within the meaning of this act, is an organization of electors under a given name. A political party shall be deemed created and qualified to participate in elections in any of the three (3) ways:

(a) By having three (3) or more candidates for state or national office listed under the party name at the last general election, or

(b) If at the last preceding gubernatorial election there was polled for any one (1) of its candidates for any state or national office, at least three per cent (3%) of the aggregate vote cast for the office of governor, or

(c) By an affiliation of not less than fifteen hundred (1,500) electors, who shall, on or before May 30th, file with the secretary of state a petition that they desire recognition as a political party, which said petition shall contain:

(A) The name of the proposed party.

(B) That the subscribers thereto have affiliated one with another, for the purpose of forming such party.

(C) That the subscribers to such notice intend to nominate at least three (3) candidates for state or national offices whereupon such affiliation shall, under the party name chosen, have all the rights of a political party whose ticket shall have been on the ballot at the preceding general election.

(2) The party or group shall after filing a qualified petition proceed to hold a state convention in the manner provided by law; provided, that at the initial convention of any such newly organized political party, all members of the party shall be entitled to attend the convention and participate in the election of officers and the nomination of candidates. Thereafter, the conduct of any subsequent

conventions shall be as provided by law. The names of the electors so petitioning need not all be on one (1) petition, but may be on one or more petitions but each petition shall be verified by at least one (1) signer thereof to the effect that the signers are qualified electors of the state of Idaho according to his best information and belief. (1970, ch. 140, § 74, p. 351; am. 1971, ch. 130, § 1, p. 511; am. 1976, ch. 344, § 3, p. 1147.)

Idaho Code Chapter 25
Election Campaign Fund

Section 34-2501. Definitions.

As used in this act, the following terms have the following meanings:

(a) "Board" means the state board of examiners provided in section 67-2001, Idaho Code.

(b) "Committee" means the state central committee as provided in section 34-504, Idaho Code.

(c) "Election campaign fund" or "fund" means the fund created by section 34-2502.

(d) "Political party" means an affiliation of electors representing a political group under a given name as authorized by section 34-501, Idaho Code:

(1) "major political party" means a political party which at the last general election polled for any one of its candidates for state or national elective office more than ten per cent (10%) of the vote cast for the office.

(3) "minor political party" means a political party which at the last general election polled for any one of its candidates for state or national elective office more than three per cent (3%) but less than ten per cent (10%) of the vote cast for the office.

(3) "new political party" means an affiliation of not less than fifteen hundred (1500) electors, who shall, on or before the date prescribed by section 34-704, Idaho Code, for filing of declaration of candidacy, file with the secretary of state a petition that they desire recognition as a political party, which said petition shall meet the requirements as otherwise prescribed by law in section 34-501, Idaho Code.

(e) "General election" means the national, state and county election held on the first Tuesday succeeding the first Monday of November of each even numbered year.

(f) "Qualified election expense" means an expense:

(1) incurred by the state central committee in furthering the election of a candidate for office or attempting to influence any election;

(2) incurred within the expenditure report period as defined in this act, or incurred before the beginning of such period to the extend such expense is for property, service, or facilities used during such period;

(3) neither the incurring nor payment of which constitutes a violation of any of the laws of the United States or of the state of Idaho.

(g) "Expenditure report period" means from the day following the primary election (the Tuesday succeeding the first Monday of August in each even numbered year) to the thirtieth (30th) day following the general election. (1975, ch. 132, § 1, p. 290.)

Section 34-2502
Election campaign fund — Creation.

There is hereby created and established in the treasury of the state of Idaho a fund to be known and designated as the "election campaign fund." The state auditor shall maintain within the fund a separate account for each party for which a specific designation is made under the provisions of section 63-3088, Idaho Code, and shall keep a general account for moneys for which no specific designation is made and which are to be distributed as provided in section 34-2503, Idaho Code.

All moneys placed in the election campaign fund are hereby perpetually appropriated to the board of examiners for administration and allocation as provided by this act. All expenditures from the fund shall be paid out in warrants drawn by the state auditor upon presentation of proper vouchers from the secretary of state. The provisions of section 67-3516(3) and (4), Idaho Code, are hereby specifically declared not to apply to the administration of the election campaign fund. (1975, ch. 132, § 2, p. 290; am. 1976, ch. 260, § 1, p. 880.)

Section 34-2503.
Election campaign fund — Distribution.

Each political party, through its central committee, shall be eligible for payments from the fund in the following manner:

(a) Each party shall receive the amount of the fund which has been designated by the contributing individuals and credited to the separate account in the fund maintained for the party.

(b) Ninety per cent (90%) of the fund which has not been designated, but is credited to the general election campaign fund, shall be distributed to the central committees in proportion to the share of the votes cast for the candidate of the party for the office of governor in the last election for governor, provided that no party shall receive more than fifty per cent (50%) of the fund so distributed. Any portion of the fund not distributed shall revert to the fund and, together with the ten per cent (10%) reserved, be distributed in equal portions to all major, minor and new political parties which have qualified candidates for elective state office for the ballot in the next general election.

(c) The distribution provided by this section shall take place on the Tuesday succeeding the first Monday of August in each even numbered year. (1975, ch. 132, § 4, p. 290)

PRESTON G. LUTZ
Attorney for Plaintiffs
1448 W. Bannock
P.O. Box 8553
Boise, Idaho 83707
Phone: 343-1808

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

The American Party of Idaho, JOHN McADAMS, individually and as Chairman of the American Party of Idaho, Plaintiffs,

vs.

CECIL D. ANDRUS, Chairman of the State Board of Examiners, and the Idaho State Board of Examiners; DENNISON C. AMBROSS, Director of the Corporation Department of the Idaho Department of Revenue and Taxation; JOE R. WILLIAMS, Idaho State Auditor; PETE CENARRUSA, Idaho Secretary of State; and MARJORIE MOON, Treasurer of the State of Idaho, Defendants,

Idaho State Democratic Party, Intervenor.

Civil No. 1-76-148

NOTICE OF APPEAL
TO THE
SUPREME COURT
OF THE
UNITED STATES

NOTICE IS HEREBY GIVEN that the American Party of Idaho and John McAdams, the Plaintiffs above named, hereby appeal to the Supreme Court of the United States from the Order and Judgment of a three judge panel of the United States District Court for the District of Idaho, granting summary judgment on a matter of law in favor of the several defendants, and entered in this action on August 19, 1976.

THIS APPEAL is taken pursuant to 28 U.S.C. S1253. Respectfully submitted, November 17, 1976.

/s/ _____
Preston G. Lutz, Boise, Idaho
Counsel for Appellants

STATE OF IDAHO)
County of Ada) ss.

AFFIDAVIT OF SERVICE

PRESTON G. LUTZ, being first duly sworn, deposes and states that on the 17th day of November, 1976, he served the above the foregoing Notice of Appeal upon the several defendants by personal service in hand delivering the same to the designated counsel for the several defendants:

Wayne Kidwell, Attorney General
State of Idaho
Attention: Peter Heiser, Chief Deputy Attorney General
Office of the Attorney General
State Capital
Boise, Idaho 83701

and upon

Paul Buser
Attorney for Intervenors (Idaho State Democratic Party)
One Capital Center
Boise, Idaho

Pursuant to Rule 33 (3) of the Rules of the Supreme Court of the United States, all parties required to be served have thusly been served.

/s/ _____
Preston G. Lutz

SUBSCRIBED AND SWORN TO before me this 17th day of November, 1976.

/s/ _____
Notary Public
Residence: Boise, Idaho

PRESTON G. LUTZ
Attorney for Plaintiffs
1448 W. Bannock
P.O. Box 8553
Boise, Idaho 83707
Phone: 343-1808

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1976
No. _____

The American Party of Idaho, JOHN McADAMS, individually and as Chairman of the American Party of Idaho, Plaintiffs,

— vs. —

CECIL D. ANDRUS, Chairman of the State Board of Examiners, and the Idaho State Board of Examiners; DENNISON C. AMBROSS, Director of the Corporation Department of the Idaho Department of Revenue and Taxation; JOE R. WILLIAMS, Idaho State Auditor; PETE CENARRUSA, Idaho Secretary of State; and MARJORIE MOON, Treasurer of the State of Idaho, Defendants

AFFIDAVIT OF SERVICE

IDAHO STATE DEMOCRATIC PARTY,
Intervenor.

ON APPEAL from the United States District Court for the District of Idaho.

STATE OF IDAHO)
County of Ada) ss.

PRESTON G. LUTZ, being first duly sworn, deposes and states that on this 18th day of November, 1976, three copies of the Jurisdictional Statement were hand delivered by personal service to the designated counsel for the several defendants:

Wayne Kidwell, Attorney General
State of Idaho
Attention: Peter Heiser, Chief Deputy Attorney General
Office of the Attorney General
State Capital
Boise, Idaho 83701

and upon

Paul Buser
Attorney for Intervenors (Idaho State Democratic Party)
One Capital Center
Boise, Idaho

I FURTHER CERTIFY that all parties required to be served have been served.

/s/ _____
Preston G. Lutz
Counsel for Appellant

SUBSCRIBED AND SWORN TO before me this 18th day of November, 1976.

/s/ _____
Notary Public
Residence: Boise, Idaho